COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

SPECIAL APPEAL NO. 10 OF 2006

1. State of Uttaranchal through Secretary, Education, Dehradun, Uttaranchal, Dehradun
2. Director of Education, Utaranchal, Dehradun
3. Joint Director of Education, Garhwal Mandal, Pauri Garhwal
4. Joint Director of Education, Kumaon Mandal, Nainital

....Appellants/Respondents

.....
Appellants

Versus

Chaturth Sherni Rajya Karamchari Sangh,
Deducation Department, Uttaranchal,
Through its Secretary Sri Mangat Singh Gusain,
Dehradun

.... Respondents

Shri K.P. Upadhyaya, learned standing counsel for the appellants.
Sri Subhash Upadhyaya, learned counsel for respondent

Dated: March 04, 2006

Coram: Hon. P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

This Special Appeal has been preferred against the judgment and order dated 21.10.2005 passed by learned Single Judge in Writ Petition No. 945 of 2004 (S/S), Uttaranchal Rajya Chaturth Vargiya Karmchari Sangh, Education Department, Uttaranchal Vs. State of Uttaranchal and others.

2. Brief facts of the case giving rise to the present appeal is that petitioner/respondent's association being aggrieved by the order dated

17.07.2004 passed by Joint Director of Education, Kumaon Mandal, Nainital preferred a writ petition by which he had indicated that for promotion from Class IV posts to Class III post, a written examination shall be conducted. The learned Single Judge vide impugned judgment and order dated 20.10.2005 allowed the writ partition of the petitioner/respondent with the direction to the respondents/appellants to make the promotions on the posts of Class III from amongst Class IV employees on the basis of existing Rules of 2004 known as "*The Uttaranchal Govt. Servants (Criterion for recruitment by promotion) Rules, 2004'* ***(hereinafter will be referred to as the Rules).*** *Feeling aggrieved, the State has come up In the appeal.*

3. We have herd leaned counsel for the parties and perused the entire evidence on record.

4. Learend counsel for the appellant submitted that the order of the Joint Director of Education was passed in accordance with the Rules-1985 known as U.P. Subordinate Offices Clerical Grade Direct Recruitment Services Rules, 1985 and hence the criterion Rules, 2004 does not apply in the present case and hence the order passed by learned Single Judge is erroneous. The argument of learned counsel for the appellant is misconceived. The learned Single Judge in his judgment has specifically recorded a finding that since Rule-2 of the said Rules provides that these rules shall have effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the Constitution, or Orders, for the time being in force, therefore, **these Rules shall have overriding effect over all other Rules.** Rule-4 of the

aforesaid Rules of 2004 provides for Recruitment by promotion, which reads as under:-

> ***4. Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head of Department and to a post in any service carrying the pay scale the maximum of which is Rs. 18,300/- or above shall be made on the basis of merit, and to the rest of the posts in all services to be filled by promotion, including a post where promotion is made from a non-gazetted post to a Gazetted post or from one service to another service, shall be made on the basis of seniority to the rejection of the unfit."***

5. Accordingly, the learned Single Judge rightly quashed the order dated 17.07.2004 by which the Joint Director of Education, Kumaon Mandla, Nainital indicated that for promotion from Class IV post to Class III posts, a written examination shall be conducted.

6. In view of the above, we do not find any infirmity or perversity in the impugned judgment passed by learned Single Judge. Therefore, the conclusion drawn by the learned single Judge appears to be perfectly justified. We do not find any good ground for interference in the impugned judgment.

7. Therefore the Special Appeal is dismissed accordingly. The judgment and order passed by learned Single Judge is upheld. No order as to costs.

(B.C. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang